



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/619,721

07/15/2003

Timothy A. Ringeisen

KN P 0065

7140

42016 7590 06/27/2008

KENSEY NASH CORPORATION  
735 PENNSYLVANIA DRIVE  
EXTON, PA 19341

EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

06/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/619,721	<b>Applicant(s)</b> RINGEISEN, TIMOTHY A.	
	<b>Examiner</b> DAVID COMSTOCK	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 14, 18, 32, 36 and 41-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of the invention of species I and i in the reply filed on 26 October 2007 is acknowledged. Applicant indicated that claims 1-13, 15-17, 19-31, 33-35, 37-42 and 47-52 are readable on both elected species. Claims 41 and 42 were previously withdrawn. By Applicant's election, claims 14, 18, 32, 36 and 43-46 are now withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Accordingly, claims 1-52 are pending and claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are currently under consideration.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenthal (EP 0 562 864 A1; cited by Applicant).

Rosenthal discloses an implant that is formed of a porous, resorbable polymer sponge material (see Abstract, column 3, lines 1-18 and column 4, lines 10-19). Porous sponge material is bendable but may be reinforced with strengthening particulate fibers.

As it bends, sponge material is compressible by virtue of its collapsing pores. The material incorporates various materials such as fibers, microspheres and biologically active agents. The device could be used with adhesive at least because the pores would accommodate the adhesive and provide a matrix for the adhesive to grip. The implant material can be cut as necessary (col. 4, lines 32-33). The pores can be considered the holes passing through the device and any such hole opening can serve as a starting location through which a fastening means, such as a staple or suture, is capable of being passed. The material is heteromorphic and may comprise multiple layers (see, e.g., column 3, lines 15-18 and Example 4 in column 8). The material is capable of maintaining a curve upon removal of a bending force (see comments in Response to Arguments below).

### ***Response to Arguments***

Applicant's arguments filed 25 September 2006 have been fully considered but they are not persuasive.

It is noted that the material is at least capable of maintaining a curved configuration upon removal of a bending force. For example, a bending force could be applied, the material could then be frozen and, the force could be removed, and the material would maintain a curved configuration upon removal of the bending force. This interpretation is considered to be reasonable since some of Applicant's own arguments and claims are directed to the temperature at which the desirable properties are

achieved. It is further noted that freezing temperatures are below the glass transition temperature of the material.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733